

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Paul Hansmeier,

Case No. 21-cv-1979 (PAM/DTS)

Plaintiff,

v.

REPORT AND RECOMMENDATION

Jeffrey Fikes, et al.

Defendants.

In an order dated September 24, 2021, this Court ordered that plaintiff Paul Hansmeier submit an initial partial filing fee of at least \$33.58, as required by 28 U.S.C. § 1915(b). See Docket No. 8. Hansmeier was given 20 days to submit this initial partial filing fee, failing which it would be recommended that this action be dismissed without prejudice for failure to prosecute. See Fed. R. Civ. P. 41(b).

That deadline has now passed, and Hansmeier has not yet paid the required initial partial filing fee for this matter. Absent a showing (which Hansmeier has not made) that he has no assets and no means through which to pay the initial partial filing fee, the requirement that the fee be paid at the outset of the case is not waivable. See 28 U.S.C. § 1915(b)(1), (4). And although Hansmeier has submitted many documents to the Court since he was ordered to pay \$33.58 towards the filing fee in this matter, he has not requested additional time to pay the initial partial filing fee or otherwise indicated that payment of the initial partial filing fee would be impossible for him at this time. Accordingly, this Court now recommends, in accordance with its prior order, that this action be dismissed without prejudice under Rule 41(b) for failure to prosecute. See *Henderson v. Renaissance Grand Hotel*, 267 Fed. App'x 496, 497 (8th Cir. 2008) (per

curiam) (“A district court has discretion to dismiss an action under Rule 41(b) for a plaintiff’s failure to prosecute, or to comply with the Federal Rules of Civil Procedure or any court order.”).

RECOMMENDATION

Based upon the foregoing, and on all of the files, records, and proceedings herein, this Court RECOMMENDS THAT:

1. This action be **DISMISSED WITHOUT PREJUDICE** under Fed. R. Civ. P. 41(b) for failure to prosecute.
2. All pending motions be **DENIED** in light of the failure to prosecute.

Dated: October 21, 2021

s/David T. Schultz
DAVID T. SCHULTZ
U.S. Magistrate Judge

NOTICE

Filing Objections: This Report and Recommendation is not an order or judgment of the District Court and is therefore not appealable directly to the Eighth Circuit Court of Appeals.

Under Local Rule 72.2(b)(1), “a party may file and serve specific written objections to a magistrate judge’s proposed finding and recommendations within 14 days after being served a copy” of the Report and Recommendation. A party may respond to those objections within 14 days after being served a copy of the objections. See Local Rule 72.2(b)(2). All objections and responses must comply with the word or line limits set forth in Local Rule 72.2(c).